

Appendix F

CDBG Conflict of Interest Regulations and Guidance

HUD CDBG Conflict of Interest Regulations

24 CFR §570.489 Program administrative requirements.

(g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by §570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.

(h) *Conflict of interest—(1) Applicability.* (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.

(ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(3) *Persons covered.* The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.

(4) *Exceptions: Thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the unit of general local government provided the State shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the State's position with respect to each

factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or unit of general local government as appropriate. An exception may be considered only after the State or unit of general local government, as appropriate, has provided the following:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the attorney for the State or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate State or local law.

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;

(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

GUIDANCE ON THE CONFLICT OF INTEREST PROHIBITION

The Department of Community Affairs (DCA) interprets this regulation in its broadest sense. DCA applies the ordinary meaning of the term "family or business ties" as follows:

- **Family:** "A group of people related by ancestry or marriage; relatives."
- **Business:** "The buying and selling of commodities and services; commerce, trade."
- **Ties:** "Something that connects, binds or joins; bond; link."

In any situation arguably falling within the conflicts prohibited by 24 CFR Part 570.489(h)(2), as interpreted by DCA, the CDBG or HOME/CHIP Applicant or Recipient should immediately contact DCA for guidance.

Applicants must include information about any possible conflict of interest situations in their Applications and explain how the regulation will be met. Exceptions will be considered if such applications are funded.

DCA will make every effort to grant exceptions to the general conflict of interest prohibition, within the authority of 24 CFR Part 489(h)(4) and (h)(5), where prior public disclosure has occurred.

In accordance with 24 CFR Part 489(h)(5), DCA must consider the cumulative effect of the following factors, where applicable, in determining whether to grant an exception:

- i. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- ii. Whether an opportunity was provided for open competitive bidding or negotiation;
- iii. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.
- iv. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
- v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;
- vi. Whether the undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- vii. Any other relevant considerations.

However, it should be noted that exceptions are not always granted. To avoid the risk of having to make reimbursements to DCA, CDBG and HOME/CHIP, recipients are advised that requests for exceptions should be submitted and considered by DCA before federal funds are expended.

To seek such an exception, a written request for an exception must be submitted by the unit of local government which:

- Fully discloses the conflict or potential conflict of interest, prior to the unit of government undertaking any action which results or may result in a conflict of interest, real or apparent; and
- A description as to how the conflict of interest was publicly disclosed and a written opinion of the local government's attorney that the interest for which the exception is sought would not violate state or local law must accompany the request.